IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1104 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

MANUBEN WD/O THAKORBHAI UKABHAI

Appearance:

MR MD PANDYA for Petitioner

MR KI SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

Date of decision: 12/01/2000

ORAL JUDGEMENT (Per D.C.Srivastava, J)

This Appeal has been preferred by the Gujarat

State Road Transport Corporation against the judgement and award dated 10.9.1984 rendered by Motor Accident Claims Tribunal, Surat awarding Rs.104000/- as compensation together with running interest at the rate of 6% p.a. from the date of claim petition till realisation together with proportionate costs to the petitioners.

2. The brief facts giving rise to this appeal are as under:-

3. The petitioners are the widow and the dependants of the deceased Thakorbhai Ukabhai. The deceased was serving in the Cooperative Society as Clerk. He had gone to Surat to another office of that society and was returning on his moped. When he reached near sign board of Palanpur, the respondent no.6 of this appeal was driving the bus number GTE - 5560 owned by the appellant. It was alleged that the driver was driving the vehicle rashly and negligently at a high speed. He tried to overtake a stationery double decker and in so doing still he was rash and negligent. The deceased was coming on moped from opposite direction and there was headon collision from the right side of the bus, as a result of which the deceased was thrown on the road and he sustained serious injuries. He was taken to the hospital at Surat where ultimately he succumbed to his injuries. He gave his statement during his life time which was considered by the Tribunal as his dying declaration. The deceased was getting monthly salary of Rs.570/-. He was also looking after agricultural operations over the land owned by his father and the income from agricultural operations was also disclosed in the claim petition. The deceased was aged about 25 years on the date of accident. He had expectation to rise up to the post of Secretary of the Society and would have earned monthly salary of Rs.1500/-. Besides this, a sum of Rs.2000/- was spent in connection with funeral expenses of the deceased, Rs.500/- as damages for damage caused to the moped and in this way net compensation of Rs.250000/- was claimed.

4. The respondent of this Appeal as well as the driver of the bus totally denied the accident and involvement of S.T.Bus No. GTE 5560 in any such accident. It was also the case of the respondents that for a period of 6 to 7 days, nobody informed the driver about the accident though the driver was regularly plying the bus on this road and that the driver was never stopped by the members of the Public just after the accident.

5. After considering the dying declaration of the deceased as well as the statement of an eye witness Maganlal Patel, who was travelling in the same bus, the Tribunal found that the driver - opposite party no.1 before the Tribunal was driving the bus rashly and negligently at a high speed as of result of which the deceased met with an accident, sustained injuries and ultimately died on account of the injuries. The plea of contributory negligence was repelled by the Tribunal. On the point of amount of compensation, the Tribunal assessed the monthly emoluments of the deceased at Rs.493/- on the date of the accident. The Tribunal also considered the wage value of the lunch and tea supplied by the society to the deceased at Rs.107/- and in this way as against monthly salary of Rs.560/- alleged by the claimants, the Tribunal found that the deceased was having monthly income of Rs.600/-. In addition to this, the Tribunal found that the deceased would have earned during holidays in a month from agricultural operations over the agricultural land owned by his father and in this way his additional income would have been Rs.100/per month. As such total monthly income of the deceased was assessed by the Tribunal at Rs.700/- per month. 16 time multiplier was applied by the Tribunal. Dependency was also considered. The Tribunal found that the deceased must have spent Rs.200/- per month on himself and must be contributing Rs.500/- per month for the maintenance of his dependants. Damage to the Moped was assessed at Rs.500/-. After applying multiplier of 16 times, the Tribunal found that the claimants were entitled to Rs.96000/- towards compensation. A sum of Rs.6000/- was also awarded as compensation for mental agony, loss of company etc. An amount of Rs.1500/- was also awarded as funeral expenses and in this way, a sum of Rs.104000/was awarded as compensation.

6. Cross objection was also filed by the claimants. However, the case was called out twice but none appeared on behalf of the claimant-respondents. Consequently the cross objections are dismissed in default.

7. Learned Counsel for the appellant has been heard in as much as none appeared from the side of the respondents. The Learned Counsel for the appellants has taken us through the entire judgement of the Tribunal. The case of the appellant that the bus in question was not involved in the accident was rightly rejected by the Tribunal after considering the evidence adduced by the claimant including the dying declaration and the FIR in the criminal case. That finding does not suffer from any infirmity. The Tribunal was justified in holding and

observing that the driver of the bus was highly interested person in avoiding liability to pay compensation. If he was successful in running away from the place of accident just after the accident it cannot be said that the vehicle could not be stopped by the members of the Public or the crowd at the spot. There is abundant evidence to show that S.T. Bus GTE 5560 was involved in the accident in question which took place on 29.11.82 at about 11:30 a.m.

8. The next point for consideration is whether the driver of this bus was driving the vehicle rashly and negligently as a result of which the accident took place and in which the deceased Thakorebhai received injuries and died in the hospital shortly after the accident. On this point also, the Tribunal has rightly assessed the evidence adduced by the claimants which consisted of oral testimony of the eye witness Maganlal Patel who was a passenger in the same bus. Ofcourse, the widow of the deceased was not a eye witness. Consequently she could not throw any light on the point of accident. The Tribunal has also relied upon the Dying Declaration of the deceased which was recorded after he sustained injuries.

9. Learned Counsel for the appellant has vehemently argued that Maganalal Patel is not a reliable witness and she has also placed reliance upon observation of the Tribunal on the point that if this witness was known to the deceased he should have stayed after the accident and not that he should have gone away from the place of accident. It is however mentioned in the judgement of the Tribunal itself that he knew deceased Thakorebhai and after the accident he informed on telephone the Manager of the Cooperative Society where Thakorebhai was serving and also informed the Manager to proceed to the place of accident and thereafter he went to his office as he had urgent work. If this witness had urgent work he was naturally expected to attend his urgent work. He did all the required formalities expected from a reasonable man i.e. he informed the Manager of the Society on telephone and also requested the Manager to reach the place of accident immediately. Not only this he also went to the hospital and also to the Police Station where his statement was recorded by the Police on the next day. Consequently, it cannot be said that he is highly interested witness or that his presence in the bus was in any way doubtful. Entire cross examination as well as relevant portion of cross examination has been reproduced in the judgement of the Tribunal. It has been observed by the Tribunal that this witness was sitting on the 2nd

row on the right side behind the seat of the bus driver. He had thus time and opportunity to witness the accident. The manner in which he gave his statement gives little scope for suspicion that he was not present at the time of the accident. He has also narrated in what manner the driver was driving the bus rashly and negligently at a high speed. He further stated that Thakorebhai was driving the Moped at a distance of 5 to 6 feet on the road from left hand side. He has rightly denied the suggestion that the road was 50 feet wide. On the other hand, the Tribunal found that the road was only 20 feet wide. A double decker bus was standing on the road. The respondent no.6 of this appeal was behind the stationery double decker. He should have taken pains and care to see that while overtaking the stationery vehicle he drove his bus slowly. He should have also taken care that nobody is coming from the other side who may collide with his vehicle. That care does not seem to have been taken by the driver-respondent no.6.

10. The Tribunal has also referred to certain statements given by this witness before the Police. However, this exercise was not legal because the statement of a witness under Section 161 of the Cr.P.C. given before the Investigation Officer is not a substantive evidence nor it can be said to be a previous statement of witness from which the witness could be confronted. However, the overall picture from the statement of this witness is that he was present in the bus and he saw the accident and he has rightly deposed that the driver of the bus was driving the bus rashly and negligently on account of which the accident took place. It is on account of the injuries sustained in the accident that the Moped driver ultimately died in the hospital. I do not find any substance in the attack against the veracity of this witness.

11. It may also be mentioned that the Tribunal has relied upon the Dying Declaration of the deceased which was recorded immediately after the accident and the deceased was in conscious condition. The validity of the Dying Declaration in such a case is not to be tested on the same touchstone as is required in a criminal case. After all after receiving injuries, the injured had no apprehension that he would die on account of injuries sustained and consequently he should have no reason for falsely implicating the bus or the driver. No enmity with the driver or the deceased is suggested or proved. The injured has also given a brief account of the accident in his statement which was considered by the Tribunal to be dying declaration. From that statement

also, it appears clear that the driver of the bus was driving rashly and negligently. Thus, the finding of the Tribunal that the driver of the bus was driving rashly and negligently does not require any interference in this appeal.

12. The Learned Counsel for the appellant has further vehemently argued that it was a case of contributory negligence and the deceased who was coming from opposite side could have easily seen the bus and could have steered his vehicle slightly to the left side in as much as there was space of 5 feet on the road and if this would have been done the accident could have been avoided. However on the plea of contributory negligence, there is no evidence or proof from the respondents and on mere surmises and conjectures no finding can be given that the Moped Driver was also negligent to some extent. The plea of contributory negligence was rightly rejected by the Tribunal and we do not find any perversity in the said finding recorded by the Tribunal.

13. The Learned Counsel for the appellant also argued that under rules it was obligatory for the Moped Driver to take notice of the coming vehicle and to drive his vehicle on the extreme left side of the road and since it was not done contributory negligence can be inferred. We are unable to accept this contention in the absence of evidence as to what was the distance between the bus and moped at the time of accident and also whether the moped driver had time to steer his vehicle further to the left side. Therefore it cannot be said that the deceased was guilty of contributory negligence. Thus, we are not inclined to interfere with the findings of the Tribunal on this point also.

14. Coming to the quantum of compensation, we do not find that the assessment made by the Tribunal is in any way excessive. The deceased was aged about 25 years. His monthly income from salary and agriculture was assessed at Rs.700/- per month. The Tribunal did not blindly accept the claim of the claimants that the deceased was earning Rs.570/- p.m. As against this the Tribunal found that on the date of the accident, the income of the deceased was Rs.493/- p.m. and that Rs.107/- were added towards the wage value on account of lunch and tea supplied to the deceased by the co-operative society. In this way monthly income was assessed at Rs.600/- and Rs.100/- was assessed as income from agricultural operations. Since the age of the deceased was only 25 years, multiplier of 16 times was rightly chosen by the Tribunal. Dependency was also

rightly considered by the Tribunal and net compensation of Rs.96000/- was correctly worked out by the Tribunal. A sum of Rs.6000/- was awarded for loss of company and mental agony. Looking to the age of the deceased this amount does not seem to be excessive. So far as damage to the moped is concerned, a sum of Rs.500/- was assessed by the Tribunal as damages on the strength of the statement of Panch Witnesses and also on the strength of the statement of Manuben, the widow of the deceased who had actully spent the above amount on repairs of the moped. As against the claim of Rs.2000/towards funeral expenses, the Tribunal reasonably awarded Rs.1500/on this score. Thus on the point of award of compensation also, we are not inclined to interfere with the findings of the Tribunal.

15. In the result, we do not find any merit in this appeal which is hereby dismissed with no order as to costs.

(D.C.Srivastava, J)

(H.K.Rathod, J)
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